DOCUMENT RESUME

ED 318 401 IR 014 305

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TITLE State Regulations in Telecommunications in the States. Introductory Remarks at the Plenary Session.
PUB DATE Oct 89
NOTE 8p.; Paper presented at the Annual Telecommunications Policy Research Conference (17th, Airlie House, Warrenton, VA, October 1-3, 1989). For other papers of this conference, see IR 014 306-322; for papers of the 16th conference, see ED 305 039-059.
PUB TYPE Viewpoints (120) -- Speeches/Conference Papers (150)

EDRS PRICE MF01/PC01 Plus Postage.
DESCRIPTORS Federal Regulation; *Policy Formation; *State Legislation; *Telecommunications; *Telephone Communications Systems
IDENTIFIERS Broadcast Economics; *Open Network Architecture; Regulatory Agencies

ABSTRACT

These introductory remarks presented at the plenary session of the 1989 Telecommunications Policy Research Conference outline major areas of concern to state regulators, including alternatives to rate of return legislation; open network architecture; content issues; technical standards and compatibility; optimal pricing; cross subsidies and dealing with bottlenecks; the spectrum issue; and recent developments in telecommunications policy and the diversity of state responses. (GL)

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STATE REGULATIONS IN TELECOMMUNICATIONS IN THE STATES

Introductory Remarks at the Plenary Session

of the

Telecommunications Policy Research Conference

Airlie, Virginia
October 1-3, 1989

by

Kenneth Gordon

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Introductory Remarks
Kenneth Gordon, Chairman
Maine Public Utilities Commission
Telecommunications Policy Research Conference
Airlie House, Airlie Virginia
October 2, 1989

Good morning. It is a pleasure for me to be here. I am honored and very pleased to be presiding over this Plenary Session on state regulation because I think a lot is going on in telecommunications in the states. The people who are attending this conference should be aware of this activity, for it has an interesting potential for study and increased understanding of how the industry operates in different circumstances.

There are at least four reasons why I'm pleased to be here. First, this is a chance for me to look back and refresh myself on what is going on in other arenas, to find out what other people are thinking about these issues. A conference like this is a time to talk about these issues in a more relaxed way than I, at least, often have time to do. It is also a chance for you to test the proposition that where he stands on these issues depends on where he sits. And perhaps I do look at some issues a little bit differently, perhaps a little more realistically, than I may have when I was in the FCC's Office of Plans and Policy.

The second reason I am pleased to be here is because virtually all of the issues being raised in this conference are things that are of concern to state regulators or ought to be. Some, such as alternatives to rate of return regulation are widely talked about. That is obvious. Open Network Architecture is another topic of great interest to state regulators. As

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some of you know, the NARUC has agreed with the FCC to form a Joint Conference to discuss the interplay between state and federal regulation. The result is the so-called 410b Conference. Content issues, perhaps not historically affecting state regulators very directly are now touched on in how the states will treat 976 services. Technical standards and compatability are issues that are also of concern to us. Next, there are the usual issues about optimal pricing, cross subsidies, and how you deal with bottlenecks. Finally, there is one that I would like to mention that probably wouldn't be recognized in many state regulators' conferences; that is the spectrum issue. I think this is extremely important, but is not something that has yet captured the interest of most state regulators. So, there is a lot going on at this conference that should be of concern to state regulators.

Third, a lot of what is actually going on today in regulation happens at the state level. Great changes are taking place. Historically, the states sometimes have been regarded as backwaters of telecommunications regulatory reform. This is clearly no longer the case. There is both activity and diversity. At the last meeting of the NARUC Communications Committee a substantial shift in policy direction took place. This is going to force a systematic reevaluation of the NARUC's positions on a number of issues, and I think that is healthy. There is a lot of diversity in the responses of the states to the new competitive environment. Some have embraced the new world of competition, with heavy reliance upon market forces to protect consumers and some have even taken what might have been regarded a few years ago as radical steps. These are

probably well ahead of federal telecommunications policy, as well as most of their sister states. Everyone is interested in these experiments. We have representatives from two such states in this session, Vermont and Nebraska. State regulators are paying close attention to what is going on in these and others' jurisdictions, and I would urge others, federal regulators, consultants, and academics to do the same, because there is a good opportunity to do interesting work in these areas.

Other states have moved forward, or appear likely to move forward, with enthusiasm but in a somewhat more deliberate fashion and work. I would put New York and California in that category.

Then, there is a third group where competition is somewhat resignedly recognized as fact of life. They see it happening, and something that you can't really avoid. The thought is that while it might be good, you are going to have a heavy burden to show me. These states will continue to be cautious and typically express a desire to keep much or all of the existing regulatory structures in place.

Finally, there are a few states that are pretty much opposed to what is going on. I classify them as the recalcitrant. Sometimes this actually is a conscious, and very frankly stated policy choice. In other cases it may be that it happens by default. So there is a very wide range of approaches to the telecommunications requirement to the states.

Until we have hard evidence that there really is a wonderful new world out there that it is entirely right for us states to vary in our responses. My own state, Maine, is probably an example of this category, but I think we are not alone. In fact, we may be the largest

group. That doesn't mean our strategy is the correct one, it just means that most of the states will be somewhat conservative.

As is often pointed out, we are in federal system and I think in this case there is an opportunity to benefit from the diverse experiences of the various states. We have before us the possibility of being able to evaluate the results of different policies, and those of you who like to do statistical work know that 50 is not a bad sample for cross section analysis. You might be able to find out something about telecommunications markets if you have the interest and take the time to try to do so. It is always nice to rely on more than theory. In order to evaluate outcomes, there will have to be some idea of what constitutes a desirable or undesirable outcome, or perhaps just what dimensions of performance we are interested in. Current policies will constitute an interesting experiment if premature uniformity is not imposed on the various players. I suggest that we need a healthy recognition that while differing strategies among the states are sometimes the result of rigidities and legal structures or even the baser aspects of politics, they may also be the result of objectively different circumstances or opportunities facing particular states. We are not all the same. Some states are highly urban, others are quite rural. Mine is a rural state, for example, and while that may or may not be an adequate excuse to move forward in particular ways, we need to determine whether or not, there is a rational reason for moving in different directions.

I have one other comment. As a result of a conversation last evening and other conversations this morning with various people at the conference,

I discovered that there are questions about the relationship of this conference to state regulation. I alluded to it a bit a few moments ago. I think the Telecommunications Policy Research Conference has an enormous potential to play a role in the thinking that is being done in the states, but it is a potential that is probably not being fully realized at the present time. There is a certain amount of insularity in state regulatory practice. This is partly a matter of history, partly a matter of commissions' work loads and partly the remoteness of their business from academic work. I have found out what it means to run from one fire to another and to have the pressures of proceeding after proceeding coming down the pike. The luxury of two full days to think along the lines here is all too rare.

In addition, as a practical matter, many of us spend most of our time on other issues; even someone like myself who is particularly interested in telecommunications. I would guess I spend 30% or less of my time on telecommunications matters. The reason is that other issues press upon us, and so if someone wants to catch our attention it is going to have to be done in a way that is fairly direct. Most state regulators are not economists. They are a wide range of things -- lawyers, a few engineers, a few economists -- not terribly many -- and people with general political or public service backgrounds. You need to be able to address them. I think another reason perhaps is that the long traditions of adversarial process in the states have colored the way in which people acquire information and the routes through which it flows.

I would urge the Board of Directors of the Telecommunications Policy Research Conference give some attention to the question of how state regulators could be made more aware of the work that goes on in what is truly an excellent group of people. It has been around a long time but is not as well known as it should be. I came to this realization when I told several state regulators (not just from my own state) that I was going to the TPRG Conference and heard questions of "what's that?". That reaction suggests that you're not reaching an audience that you really need to reach. So with that little bit of preaching and sermanizing I will move on to the fourth reason that I am glad to be here.

And that is that I have at my side five individuals who are extremely well qualified to address these issues. Three state regulators, one federal regulator and one long time student of how regulation works and works in the United States in all kinds of industries.